

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3870 OF 2003
IN
CRIMINAL APPEAL NO.371 OF 2002

Abdul Rehman Alifaarah. ..Applicant.

V/S.

N.C.B. & Anr. .. Respondents.

Shri Ayaz Khan for Applicant.

Shri D.A.Nalawade, P.P. for Union of India.

Mr.Y.S.Shinde, APP for State.

CORAM: A.M.KHANWILKAR, J

DATE : NOVEMBER 8, 2006.

P.C. :

1. This application is founded on the recent amendment to the provisions of NDPS Act which were effected in the year 2001 being Amending Act, 9 of 2001. According to the accused, it is now necessary to indicate the percentage of the contents in the sample sent for analysis. Depending on the percentage of contents in the sample, the court can arrive at decision about quantity of substance seized from the accused and on which basis impose appropriate sentence for small quantity, intermediate quantity and commercial quantity, as the case may be. In the present case, the incident in question relates

back to 17th June, 1999, much before the amending Act. The samples were sent for chemical analysis to the Deputy Chief Chemist as well as Forensic Science laboratory. Both these authorities have submitted their respective reports, which have been relied upon by the prosecution and exhibited during the trial. Recently the Supreme Court in the case of **Basheer @ N.P.Basheer V/s. State of Kerala (2004 All M.R.(Cri.) 893 (S.C.)** has held that the provisions of amending act have retrospective effect. On this basis the accused has moved the present application seeking for the following reliefs.

"(a) direct the respondent No.1 to produce the percentage report in respect of present case.

(b) direct the respondent No.2 to produce the percentage report in respect of present case from the office of F.S.L. Kalina, Mumbai.

(c) direct that both the Chemical Examiner i.e. DYCC and FSL be examined and their evidence be recorded under the provisions of section 391 of the Cr.P.C. 1973."

2. The Prosecutor representing the respondents submits that there is no objection, if the aforesaid prayers were to be granted. He submits that if prayer clause (c) is granted, during the evidence of the concerned chemical analyser, record regarding necessary percentage and other information relevant for deciding controversy in issue will be brought on record. In any case, I am satisfied that this additional evidence would be necessary for full, complete and effectual decision in the present case.

3. Accordingly, by consent of the parties, application is allowed in terms of prayer clause(c) to the extent of examining Chemical Examiner from F.S.L., Kalina, Mumbai.

4. The concerned chemical examiner of Forensic Science Laboratory, Kalina, Mumbai is present in the Court alongwith the relevant record. He has remained present in the court as per the intimation given by the Prosecutor about the possibility of being examined in this present matter, in view of the relief claimed in the present application. Accordingly, by consent, I proceed to record evidence of Mr. J.P.Kulkarni, presently Assistant Director, Forensic Science Laboratory, Kalina, Mumbai(at the

relevant time he was Assistant Chemical Analyser and report was submitted under his signature.)

5. Counsel for all the accused fairly submit that personal presence of accused in this court at the time of recording of evidence is not necessary and that right of accused is being waived. On this assurance, I proceed to record the evidence of Mr.J.P.Kulkarni.